IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 619 OF 2007

Dr.Sunaina Bhasin ...Petitioner
V/s.
Mrs.Mariam Awazi Makharia & Ors. ...Respondents

Mr.Virag Tulzapurkar with Ms.N. Kar, A.M. Nathani i/b. Inter Juris for the Petitioner.
Mr.N.N. Bhadrashete for Respondent No.1.
Ms.Deepti Chand i/b. M/s.Advani & Co. for Respondent No.2.
Ms.Mamta Sadh, AGP for Respondent No.4.

CORAM : V.M. KANADE, J.

DATED : JUNE 4, 2007

P.C. :-

1. Rule. Rule is made returnable forthwith. By consent of the parties, matter is taken up for final hearing.

2. Heard the learned Counsel for the petitioner.

3. The petitioner is challenging the order passed by the Maharashtra State Co-operative Appellate Court dated 31st January, 2007 in an application which was taken out by respondent no.1 herein. By the said order, the Co-operative Appellate Court was pleased to allow the respondent no.1 to be added as a party disputant to the dispute which was filed by respondent no.2.

4. Brief facts are that a dispute was filed by the owner of flat no.42 and she claimed that the service toilet situated outside her flat belonged to her and that respondent no.3 was trying to encroach upon the said property. Thereafter, respondent no.1 filed an application praying that she be added as disputant since the flat had been purchased by her by registered Sale Deed dated 30th December, 2005. This application was allowed by the Co-operative Appellate Court and the respondent no.1 herein was permitted to be added as a disputant to the original dispute.

5. The learned Counsel for the petitioner submitted that respondent no.1 had purchased the said flat by a registered conveyance deed. He submitted that the disputed portion was situated outside the said flat no.42. He submitted that after perusal of the Agreement, it could be seen that the respondent no.1 had merely purchased the said flat no.42 and there was no reference to the service toilet which was situated outside the said flat. He invited my attention to the

said Agreement and also to the schedule which gives the description of the said property. He submitted that therefore, respondent no.1 was not concerned in any manner in respect of the toilet which is situated outside flat no.42. He further invited my attention to the operative part of the order and pointed out that respondent no.1 had initially filed an application seeking deletion of the name of the original disputant and substitution of her name in her place. He submitted that however, in the operative part of the order, Co-operative Appellate Court had, on the one hand, allowed the application and on the other hand, had directed that respondent no.1 should be allowed to be added as a disputant. He submitted that the operative part of the order, therefore, was ambiguous and vague.

6. In my view, the submission made by the learned Counsel for the petitioner cannot be accepted. It is a well settled position in law that a person who steps into the shoes of the original disputant has a right to contest the suit after he purchases the suit property. Order I Rule 1 also clearly permits such a person to

contest the pending litigation. Order I Rule 1 reads as under :-

> "**Who may be joined as plaintiffs.**- All persons may be joined in one suit as plaintiffs where-
>
> (a) any right to relief in respect of, or arising out of, the same act or transaction or series of acts or transactions is alleged to exist in such persons, whether jointly, severally or in the alternative; and
>
> (b) if such persons brought separate suits, any common question of law or fact would arise.]"

7. In my view, therefore, there is no infirmity in the order passed by the Co-operative Appellate Court and all other questions which are raised by the petitioner herein can be decided at the time of final hearing of the dispute. In my view, there is no ambiguity in the order passed by the Co-operative Appellate Court and though it is mentioned that the application is allowed, the Court has in fact only permitted respondent no.1 to be added as disputant. There is no reason, therefore, to interfere with the impugned order while exercising writ jurisdiction of this Court.

8. Writ Petition is dismissed. Rule is discharged.

9. All other questions are kept open.

(V.M. KANADE, J.)